

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

## ORDER

United States Magistrate Judge Suzanne Mitchell has issued a Report and Recommendation, recommending the denial of plaintiff's fifth request to extend the time to file his opening brief and the dismissal of plaintiff's action under Rule 41(b), Fed. R. Civ. P., for failure to prosecute.

Plaintiff has timely objected to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a de novo review of the matter. Having done so, the court concurs with Magistrate Judge Mitchell's analysis and recommended ruling. The court agrees that plaintiff has failed to show the requisite good cause to support his fifth request to file his opening brief out of time. In addition, the court agrees that because of plaintiff's failure to submit an opening brief in support of his claims of error on judicial review, dismissal of plaintiff's action, under Rule 41(b), for failure to prosecute is appropriate. The court finds plaintiff's objection to be without merit.

Accordingly, the Report and Recommendation of United States Magistrate Judge Suzanne Mitchell (doc. no. 23), issued on July 14, 2017, is **ACCEPTED**,

**ADOPTED** and **AFFIRMED**. Plaintiff's Unopposed Motion to File Opening Brief Out of Time (doc. no. 22) is **DENIED**. The above-entitled action is **DISMISSED** under Rule 41(b), Fed. R. Civ. P., for failure to prosecute.

IT IS SO ORDERED this 11<sup>th</sup> day of August, 2017.



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STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE

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